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AUTHOR Zirkel, Perry A.
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ABSTRACT

In 1978 Congress enacted an amendment to the General Education Provisions Act (the Hatch Amendment), which mandates two privacy-based safeguards in those federally funded programs "designed to explore or develop new or unproven teaching methods or techniques." Implementing regulations were issued last fall by the U.S. Department of Education. A number of broad-based attempts to apply the Hatch Amendment to instructional programs are happening nationwide. Several conservative organizations distributed to some 250,000 parents a "model letter" that enumerated activities comprising 34 topics that the groups believe parents are entitled to review and approve before their children participate in them. The National School Boards Association (NSBA) supports the objective that school systems inform parents of experimental programming and not engage in psychological testing and treatment without parental consent. The NSBA found that over three-quarters of 386 school systems surveyed already had such policies and is urging that the "confusing and unnecessary" Hatch regulations should be withdrawn and the legislation repealed. To be certain that school system policy conforms with the requirements of the Hatch Amendment, board members are advised to assess policy and see that it gives parents the legal right to inspect all instructional materials. The policy should contain a fair procedure for dealing with complaints and require that complaints, acknowledgments, and decisions all be in writing. (MLF)

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Updating SCHOOL BOARD POLICIES

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Be prepared when parents complain

by Perry A. Zirkel

Parental complaints about what goes on in public schools aren't a new phenomenon. School administrators and board members know, or soon learn, that complaints—ranging from "Why can't my Johnny read?" to "Why are you making Johnny read *that*?"—come with the territory.

With the exception of a relatively few court cases, most parental complaints are addressed quickly and amicably at the local level. Now, however, complaining parents have another resource: the U.S. Department of Education.

The Hatch Amendment

In 1978 Congress enacted an amendment to the General Education Provisions Act (GEPA) that remained in near oblivion until the U.S. Department of Education issued implementing regulations last fall. Introduced by Senator Orrin Hatch (R-Utah), the "Hatch Amendment" mandates two privacy-based safeguards in those *federally* funded programs that are "designed to explore or develop new or unproven teaching methods or techniques": 1) a parental right to inspect all instructional materials in such *federal* programs, and 2) parental consent as a prerequisite to psychological examination, testing, or treatment as part of such *federal* programs where the primary purpose is to reveal information in seven specified areas:

- political affiliations;
- potentially embarrassing psychological problems;
- sex behavior and attitudes;
- anti-social or self-incriminating behavior;
- criticism of family members;
- privileged communications, such as with lawyers, physicians, or ministers;
- family income.

The implementing regulations reiterate these statutory safeguards for *federally* funded research or experimentation programs, and add:

- a set of enforcement procedures, starting with a written complaint by the offended parent and culminating with U.S. Department of Education involvement and the potential loss of federal funds;
- a definition of psychological examination, testing, or treatment, that excludes activities directly related to academic instruction.

The National Committee for Citizens in Education (NCCE), which aims to keep parents accurately informed of their rights and responsibilities regarding public schools and advocates a constructive parent/school partnership, praised the regulations. "Everybody Wins!" proclaimed the headline in *Network*, the NCCE newspaper (November 1984). While calling the regulations "not perfect," NCCE wrote, "Those parents, school officials, and advocacy groups who feared the Hatch Amendment would become a loose cannon, aimed at general classroom inquiry or private conversations between teachers and students, should be greatly relieved."

The model letter

If there was general relief, it was short-lived. As an immediate result of the regulations, several conservative organizations, including the Eagle Forum, distributed a "model letter" to some 250,000 parents around the country.

Designed for the parent to address to the school board chairman with a copy to the school principal, the model letter enumerated activities comprising 34 topics (see box on page 3) that parents are entitled to review and approve before their children participate in them. The letter also requests a "substantive response," that "relevant teachers" be notified of the parent's request for review of materials and written approval, and that a copy of the letter be retained in the child's permanent file.

Controversy ensues

Educational organization reaction to the regulations—and to their broad interpretation by conservative groups—was predictable. A coalition of 26 education and civil rights groups publicly characterized the regulations as an improper extension of the legislation—a federal intrusion into curriculum and academic freedom. Legal authorities, such as the editors of the *Texas School Administrator's Legal Digest*, characterized the model letter as a gross distortion of the Hatch Amendment and its regulations.

In a penetrating analysis, NSBA federal relations director Michael Resnick concluded that the complaint/enforcement procedures provided in the regulations "pose serious federal control issues for local school boards." In addition, the substantive definitions "shift the original legislative emphasis to one which will inhibit . . . classroom activities." Resnick suggested that "depending upon who is making the judgment for the Department of Education, a simple question such as . . . 'What did you

continued on page 2

Perry A. Zirkel is university professor of education at Lehigh University, Bethlehem, Pennsylvania and a frequent contributor to Updating.

EA 018 111

continued from page 1

enjoy about your summer vacation? could be viewed as a psychological test."

Confusion persists

The public controversy caused Senator Hatch to state on the Senate floor that the Amendment and its implementing regulations are not intended to apply to any curriculum or other school activities not directly supported by federal funds. He clarified, for example, that sex education programs paid for by local and state revenues are not covered by the law. Similarly, he explained that federal funds received by a school system on a formula basis, such as Chapter 1, do not trigger coverage beyond the experimental, demonstration, or tutoring program that are related directly to those funds. "Let the rule of common sense prevail," Hatch urged.

Secretary of Education William J. Bennett echoed Hatch's emphasis on the narrow scope of the legislation and regulations, criticizing their misinterpretation. Nevertheless, statements by Bennett regarding a "child's right to privacy of his own thoughts and beliefs" and that schools should "get back to the things we should be teaching" seem contradictory to some people.

Cooperation threatened

Concerned that the controversy could "throw parent/school relations back to the Dark Ages," NCCE policy committee member Carl L. Marburger wrote in *Network* (April 1985): "You do your own mission harm by signing on to misleading letters written by others." While parents have rights to family privacy and to request alternative school assignments, Marburger advised, they "*do not* have the right to restrict the free flow of ideas for others in a public school classroom."

Advocates for conservative parent groups remain undaunted, however. They have termed Senator Hatch's remarks "misleading." Pointing to the reference in the model letter to "court decisions," they contend that parent groups have the legal right to do what the letter indicates with or without the Hatch Amendment and with or without the involvement of federal funding.

Court decisions

Contrary to the wide-ranging scope of taboo subjects listed in the model letter, courts generally have upheld the constitutionality of the study of sex education, evolution, and various other such subjects in public schools despite parental objections. Similarly, courts generally have rejected parents' privacy and religion-based objections to various textbooks and other materials. Excusal systems have helped swing the courts in the school system's favor in several cases.

More to the point, two court decisions have addressed the psychological-test-or-treatment target of the Hatch Amendment.

In *Merriken* v. *Cressman* (1973), a federal district court in Pennsylvania issued an injunction against a school system's special drug prevention program. Rejecting alleged violations of free exercise of religion, freedom of speech, privilege of self-incrimination, and freedom of assembly, the court based its decision on the constitutional right of privacy. Pointing to personal questions about family interactions in the drug prevention program's student questionnaire and the "selling devices" used by the school system to secure parental cooperation, the court found that, despite its good intentions, the program lacked informed consent such as that obtained by a physician before performing surgery.

In *Roman* v. *Appleby* (1983), however, the same federal court reached the opposite result in a parents' suit against a guidance counselor and social worker. The parents objected to personal questions that were discussed with the student, including his feelings about family, sex, and religion. The court dismissed the parents' various constitutional claims, including religious freedom and family privacy, finding that the defendants did not violate clearly established law in their treatment of the student and thus were protected by public educators' qualified, or "good faith," immunity.

Implications for school systems

In Hillsboro, Mo., a parent group (Parents Who Care for Basic Skills, Inc.) recently charged school system officials with violating the Hatch Amendment. The parents contended that the school system had failed to obtain prior parental consent for student participation in the guidance counseling program, state-mandated sex education courses, the showing of the film "Romeo and Juliet," and several other "humanistic" school activites. Based on legal counsel, the school board rejected the charges, taking the position that the Hatch Amendment did not apply to those programs since they were not federally funded.

As a next step, the parent group filed suit in circuit court, claiming that a 1983 state law extends the Hatch Amendment's coverage to all school programs—not just federally funded programs. The case was due to be argued in August.

According to school system attorney John Schneider, "The state statute was intended only to require schools to obey the Hatch Amendment, which is limited to programs supported by federal funds. The suit seeks only interpretation of the state statute, and," added Schneider, "if the court finds in the plaintiff's favor, they'll have to file a new suit to protest particular programs."

Similar broad-based attempts to apply the Hatch Amendment to instructional programs are happening nationwide—in North Clackamas (Ore.), Cobb County (Ga.), West Alexander (Pa.), Grand Island (N.Y.), and other places. Recently, NSBA's federal relations office conducted a survey of its Federal Relations Network regarding the Hatch Amendment regulations. The 386 completed questionnaires revealed that complaints to the participating school systems have numbered 37, and less than one-third of the complaints mentioned the Hatch regulations directly. Nevertheless, 37 documented complaints from a base of 386 school systems could mean that as many as 1,565

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NSBA President
Mack J. Spears

NSBA Executive Director
Thomas A. Shannon

Associate Executive Director
James Betchkal

Assistant Executive Director
Robert F. Lucas

school systems have had to deal with such complaints.

Based on the survey, NSBA, which supports the objective that school systems inform parents of experimental programming and not engage in psychological testing and treatment without parental consent, is urging that the "confusing and unnecessary" regulations should be withdrawn and the legislation repealed.

Guarantee rights

As revealed by the NSBA survey, a high percentage of the responding school systems already had in place policies and procedures that enable parents to inspect classroom materials (76 percent), require parental consent before psychological tests or treatments are administered (95 percent), and provide for appeal of decisions (96 percent). Moreover, a clear majority already had a process for notifying parents of their rights. "We conclude that school officials have and are actively seeking parental involvement in the education of their children," stated the survey report issued by NSBA in June.

To be certain that your school system's policies and procedures conform with the requirements of the Hatch Amendment, a thorough assessment, with the assistance of appropriate legal counsel, is advised. In general, policy should give parents the right to inspect *all* instructional materials and establish a fair procedure for dealing with complaints. According to NSBA's Resnick, such a policy is "the best protection." Incorporate also parental rights to seek excusal of their children with respect to certain instructional materials and programs. Such a policy should be widely disseminated to students, parents, and staff to ensure that all involved know their rights and the procedures for handling complaints.

To deal effectively with complaints that specifically relate to the Hatch Amendment, your procedure should:

- designate a contact person to receive complaints and questions to ensure consistent and appropriate school system action;
- require that complaints be made in writing to prevent substantive changes to the complaint during appeal;
- require that the written, specific complaint be a prerequisite for local action;
- require that complaints be acknowledged in writing and contain information on the process for investigation and decison making;
- require written decisions (that are reviewed with legal counsel) that contain the reasons supporting the decision.

Remember, the Hatch Amendment supports parental rights of inspection and approval only with regard to their own children. It doesn't give parents the right to force a school system to eliminate a program that the school system judges to be beneficial and appropriate. ■

What do you think?

The model letter parents were urged by conservative organizations to send to school boards contained this list of subjects and activities that conservative groups believe require review and approval by parents before children can participate.

- Psychological and psychiatric examinations, tests, or surveys that are designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings of an individual or group;
- Psychological and psychiatric treatment that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group;
- Values clarification, including use of moral dilemmas, discussion of religious or moral standards, role playing of situations involving moral issues, open-ended discussions of moral issues, and survival games including life/death decision exercises;
- Education pertaining to alcohol and drug abuse;
- Death education, including abortion, euthanasia, suicide, and use of violence;
- Instruction in nuclear war, nuclear policy, and nuclear classroom games;
- Anti-nationalistic, one-world government or globalism curriculum;
- Education in inter-personal relationships, including family life, discussions of attitudes toward parents, and parenting;
- Education in human sexuality, including premarital sex, extramarital sex, contraception, abortion, homosexuality, group sex and marriages, prostitution, incest, masturbation, bestiality, divorce, population control, and roles of males and females;
- Pornography and any materials containing profanity and/or sexual explicitness;
- Guided fantasy techniques;
- Hypnotic techniques;
- Imagery and suggestology;
- Witchcraft and the occult, including horoscopes and zodiac signs;
- Organic evolution, including the idea that man has developed from previous or lower types of living things;
- Political affiliations and beliefs of student and family;
- Personal religious beliefs and practices;
- Mental and psychological problems potentially embarrassing to the student or family;
- Sex behavior and attitudes of student or family;
- Illegal, anti-social, self-incriminating and demeaning behavior;
- Critical appraisals of other individuals with whom the student has close family relationships;
- Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers;
- Income, including the student's role in family activities and finances;
- Non-academic personality tests;
- Questionnaires on personal life, views, and family;
- Log books, diaries, personal journals, and autobiography assignments;
- Sociograms;
- Contrived incidents for self-revelation;
- Sensitivity training, including group encounter sessions, group contact sessions, talk-ins, magic circle techniques, self-evaluation, and auto-criticism;
- Strategies specifically designed for self-disclosure;
- Blindfold walks;
- Isolation techniques;
- Psychodrama;
- Sociodrama.

You probably haven't heard of some of these practices. But the letter stated that many of them "are in use in schools throughout the United States."